IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 15TH NOVEMBER 2007 / 24TH KARTHIKA 1929

Bail Appl..No. 6901 of 2007()

CRIME NO.664/2007 OF KUNNAMKULAM POLICE STATION

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APPLICANT/1ST ACCUSED:

SHERMI SUNIL, W/O. SUNIL,
VADAKOOT HOUSE, ANAYKAL DESOM, KANIPAYOOR VILLAGE,
THRISSUR.

BY ADV. SRI.P.SANTHOSH (PODUVAL)
SMT.R.RAJITHA

RESPONDENT: COMPLAINANT:

STATE OF KERALA,
REPRESENTED BY SUB INSPECTOR OF POLICE,
KUNNAMKULAM POLICE STATION THROUGH
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 15/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

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B.A.No. 6901 of 2007

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Dated this the 15th day of November, 2007

ORDER

Application for anticipatory bail. The petitioner, a young woman with a child aged about one year has come to this Court seeking directions under Sec.438 Cr.P.C. Crime has been registered on the basis of a private complaint filed by the President of a Co-operative Bank. The crux of the allegations against the petitioner is that she applied for a loan from the Bank of which she is a member. She offered the 2nd accused as a surety. The 2nd accused offered an item of property as security but he had already sold that item of property to another person. Such other person had offered the very same property as security to another Bank earlier. Suppressing the said transaction, the 2nd accused held himself out as the owner/ title holder/ person in possession of the property. Loan was availed from the Co-operative Bank. Encumbrance certificate produced by A1 and A2 did not show that A2 had already sold the property to such person. The bank was thus induced to believe that the property can be accepted as security. The Bank advanced the amount. Later the bank realized that the Bank was fraudulently deceived to accept the property as security. On the complaint filed by the Bank, the learned Magistrate made a reference under Section 156(3) Cr.P.C. Crime has

been registered. Investigation is in progress.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. In fact the 2nd accused had approached the petitioner with a request to enable him to avail a loan stating that he was not a member of the Cooperative Bank and hence he could not avail the loan. The petitioner was willing to oblige the 2nd accused. She found no risk involved at all as it was the property of the 2nd accused which was being offered as security. She accordingly signed all the necessary papers. The loan was availed and amount was handed over to the 2nd accused. The learned counsel for the petitioner submits that the 1st accused was not aware at all that there was an earlier sale of the property. The 2nd accused occupies the residential building in the property. Encumbrance certificate did not also show such a prior transaction. In these circumstances, the petitioner had entered into the transaction with absolutely bona fides, submits the learned counsel for the petitioner.

3. In these circumstances it would be unjust and unnecessary to compel the petitioner to suffer the trauma of arrest and incarceration. The petitioner is willing to co-operate with the Investigators. The petitioners may be granted anticipatory bail, submits the learned counsel for the petitioner. The learned Public Prosecutor does not

oppose the application. The learned Public Prosecutor only submits that appropriate conditions may be imposed to facilitate a prompt, fair and efficient investigation.

4. I am satisfied, in the facts and circumstances of the case, that anticipatory bail can be granted to the petitioner. I have gone through the case diary. I do note that there are indications that when the officials of the Bank went to the property in question the 2nd accused was in occupation of the building in the property. There is also litigation now between the 2nd accused and the said transferee as to whether title had actually passed or not. No specific circumstances are shown to exit which can persuade me not to grant anticipatory bail in favour of the petitioner. Appropriate conditions can of course be imposed.

5. In the result, this petition is allowed. Following directions are issued under Section 438 Cr.P.C in favour of the petitioner.

i) Petitioner shall surrender before the learned Magistrate having jurisdiction at 11 a.m on 22.11.2007.

ii) She shall be released on regular bail on condition that she executes a bond for Rs.25,000/-(Rupees twenty five thousand only) with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

iii) The petitioner shall make herself available for interrogation before the investigating officer between 10 a.m and 1 p.m on 23.11.2007 and 24.11.2007 and thereafter as and when directed by the investigating officer in writing to do so.

(iv) If the petitioner does not appear before the learned Magistrate as directed in clause (i), directions issued above shall thereafter stand revoked and the police shall be at liberty to arrest the petitioner and deal with her in accordance with law, as if these directions were not issued at all.

(v) If she were arrested prior to 22.11.2007, she shall be released on bail on her executing a bond for Rs.25,000/- (Rupees twenty five thousand only) without any sureties, undertaking to appear before the learned Magistrate on 22.11.2007.

(R.BASANT, JUDGE)

sj